

Second Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 18-1230.01 Jason Gelender x4330

SENATE BILL 18-259

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SENATE SPONSORSHIP

**Smallwood**, Baumgardner, Marble, Neville T., Sonnenberg, Tate

HOUSE SPONSORSHIP

(None),

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Senate Committees

Finance

House Committees

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A BILL FOR AN ACT

101 CONCERNING THE TAXATION OF RETAIL MARIJUANA BY LOCAL  
102 GOVERNMENTS.

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Bill Summary

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)*

**Section 1** of the bill:

- ! Allows a county or municipality that levies excise tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility to calculate the tax based on either the average market rate (the only method allowed under current law) or the actual sales price of the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

unprocessed retail marijuana; and

- ! If a municipality annexes an unincorporated area within which a county is levying an excise tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility, allows the county to continue to levy the excise tax for 3 years following the date of the annexation and prohibits the municipality from levying an excise tax on such sales until the county's authority to levy an excise tax expires.

**Section 2** eliminates the authority of a metropolitan district to levy general sales tax on retail sales of marijuana. **Section 3** expands the statutory definition of "unprocessed retail marijuana" to include marijuana at the time of the first transfer or sale from a retail marijuana cultivation facility to another retail marijuana cultivation facility. **Section 4** requires the state retail marijuana excise tax to be imposed at the time when the retail marijuana cultivation facility first sells or transfers unprocessed retail marijuana from the retail marijuana cultivation facility to not only a retail marijuana product manufacturing facility or a retail marijuana store (as is the case under current law), but also to another retail marijuana cultivation facility.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 29-2-114, **amend**  
3 (1)(a) and (2)(a); and **add** (7) as follows:

4 **29-2-114. Retail marijuana excise tax - county - municipality**  
5 **- election.** (1) (a) In addition to any sales tax imposed pursuant to section  
6 29-2-103 and articles 26 and 28.8 of title 39, and in addition to the excise  
7 tax imposed pursuant to article 28.8 of title 39, each county in the state is  
8 authorized to levy, collect, and enforce a county excise tax on the first  
9 sale or transfer of unprocessed retail marijuana by a retail marijuana  
10 cultivation facility authorized by the county; except that a county is not  
11 authorized to levy, collect, and enforce a county excise tax on the first  
12 sale or transfer of unprocessed retail marijuana by a retail marijuana  
13 cultivation facility pursuant to this subsection (1) within any municipality  
14 that levies such an excise tax pursuant to subsection (2) of this section.

1     ~~Such~~ THE excise tax must be calculated based on EITHER the average  
2     market rate OR THE ACTUAL SALES PRICE of the unprocessed retail  
3     marijuana. The tax shall be imposed at the time when the retail marijuana  
4     cultivation facility first sells or transfers unprocessed retail marijuana  
5     from the retail marijuana cultivation facility to a retail marijuana product  
6     manufacturing facility, a retail marijuana store, or another retail marijuana  
7     cultivation facility. The tax rate imposed pursuant to this subsection (1)(a)  
8     may not exceed five percent of the average market rate, as determined by  
9     the department of revenue pursuant to section 39-28.8-101 (1), of the  
10    unprocessed retail marijuana.

11           (2) (a) In addition to any sales tax imposed pursuant to section  
12    29-2-102 and articles 26 and 28.8 of title 39, and in addition to the excise  
13    tax imposed pursuant to article 28.8 of title 39, each municipality in the  
14    state is authorized to levy, collect, and enforce a municipal excise tax on  
15    the first sale or transfer of unprocessed retail marijuana by a retail  
16    marijuana cultivation facility. ~~Such~~ THE excise tax must be calculated  
17    based on EITHER the average market rate OR THE ACTUAL SALES PRICE of  
18    the unprocessed retail marijuana. The tax shall be imposed at the time  
19    when the retail marijuana cultivation facility first sells or transfers  
20    unprocessed retail marijuana from the retail marijuana cultivation facility  
21    to a retail marijuana product manufacturing facility, a retail marijuana  
22    store, or another retail marijuana cultivation facility. The tax rate imposed  
23    by any statutory municipality pursuant to this subsection (2)(a) may not  
24    exceed five percent of the average market rate, as determined by the  
25    department of revenue pursuant to section 39-28.8-101 (1), of the  
26    unprocessed retail marijuana.

27           (7) IF A MUNICIPALITY ANNEXES AN UNINCORPORATED AREA

1 WITHIN WHICH A COUNTY IS LEVYING AN EXCISE TAX ON THE FIRST SALE  
2 OR TRANSFER OF UNPROCESSED RETAIL MARIJUANA BY A RETAIL  
3 MARIJUANA CULTIVATION FACILITY PURSUANT TO SUBSECTION (1) OF THIS  
4 SECTION, THE COUNTY MAY CONTINUE TO LEVY THE EXCISE TAX FOR  
5 THREE YEARS FOLLOWING THE DATE OF THE ANNEXATION AND THE  
6 MUNICIPALITY MAY NOT LEVY AN EXCISE TAX ON THE FIRST SALE OR  
7 TRANSFER OF UNPROCESSED RETAIL MARIJUANA BY A RETAIL MARIJUANA  
8 CULTIVATION FACILITY PURSUANT TO SUBSECTION (2) OF THIS SECTION  
9 UNTIL THE COUNTY'S AUTHORITY TO LEVY AN EXCISE TAX WITHIN THE  
10 ANNEXED AREA EXPIRES.

11 **SECTION 2.** In Colorado Revised Statutes, 39-26-729, **amend**  
12 **as added by Senate Bill 18-088** (1)(b) and (2) as follows:

13 **39-26-729. Retail sales of marijuana.** (1) (b) Any metropolitan  
14 ~~district that levies sales tax as authorized by section 32-1-1106(1);~~ health  
15 assurance district that levies sales tax as authorized by section 32-19-112  
16 (1) or health service district that levies sales tax as authorized by section  
17 32-19-112 (1) may levy sales tax on retail sales of marijuana upon which  
18 the retail marijuana sales tax is imposed pursuant to section 39-28.8-202  
19 regardless of whether or not the district was levying sales tax on such  
20 sales before July 1, 2017.

21 (2) The governing body of any special district or limited purpose  
22 governmental entity that was levying sales tax upon retail marijuana sales  
23 before July 1, 2017, and the governing body of any ~~metropolitan district,~~  
24 health assurance district or health service district that is authorized by  
25 subsection (1)(b) of this section to levy sales tax on retail marijuana sales  
26 shall determine whether the levying of such sales tax complies with the  
27 Colorado constitution and applicable decisions of the Colorado supreme

1 court and Colorado court of appeals and, if the governing body of any  
2 such special district or limited purpose governmental entity determines  
3 that additional voter approval is required to levy sales tax upon retail sales  
4 of marijuana, the special district or limited purpose governmental entity  
5 shall not resume levying sales tax upon such sales until voter approval is  
6 obtained.

7 **SECTION 3.** In Colorado Revised Statutes, 39-28.8-101, **amend**  
8 (15) as follows:

9 **39-28.8-101. Definitions.** Unless the context otherwise requires,  
10 any terms not defined in this article 28.8 have the meanings set forth in  
11 article 26 of this title 39. As used in this article 28.8, unless the context  
12 otherwise requires:

13 (15) "Unprocessed retail marijuana" means marijuana at the time  
14 of the first transfer or sale from a retail marijuana cultivation facility to  
15 a retail marijuana product manufacturing facility, ~~or~~ a retail marijuana  
16 store, OR ANOTHER RETAIL MARIJUANA CULTIVATION FACILITY.

17 **SECTION 4.** In Colorado Revised Statutes, 39-28.8-302, **amend**  
18 (1)(a)(I) as follows:

19 **39-28.8-302. Retail marijuana - excise tax levied at first**  
20 **transfer from retail marijuana cultivation facility - tax rate.**

21 (1) (a) (I) Except as otherwise provided in subsection (1)(b) of this  
22 section, there is levied and shall be collected, in addition to the sales tax  
23 imposed pursuant to part 1 of article 26 of this title 39 and part 2 of this  
24 article 28.8, a tax on the first sale or transfer of unprocessed retail  
25 marijuana by a retail marijuana cultivation facility, at a rate of fifteen  
26 percent of the average market rate of the unprocessed retail marijuana if  
27 the transaction is between affiliated retail marijuana business licensees.

1 Except as otherwise provided in subsection (1)(b) of this section, there is  
2 levied and shall be collected, in addition to the sales tax imposed pursuant  
3 to part 1 of article 26 of this title 39 and part 2 of this article 28.8, a tax  
4 on the first sale or transfer of unprocessed retail marijuana by a retail  
5 marijuana cultivation facility, at a rate of fifteen percent of the contract  
6 price for unprocessed retail marijuana if the transaction is between  
7 unaffiliated retail marijuana business licensees. The tax shall be imposed  
8 at the time when the retail marijuana cultivation facility first sells or  
9 transfers unprocessed retail marijuana from the retail marijuana  
10 cultivation facility to a retail marijuana product manufacturing facility, ~~or~~  
11 a retail marijuana store, OR ANOTHER RETAIL MARIJUANA CULTIVATION  
12 FACILITY.

13 **SECTION 5. Act subject to petition - effective date.** This act  
14 takes effect at 12:01 a.m. on the day following the expiration of the  
15 ninety-day period after final adjournment of the general assembly (August  
16 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a  
17 referendum petition is filed pursuant to section 1 (3) of article V of the  
18 state constitution against this act or an item, section, or part of this act  
19 within such period, then the act, item, section, or part will not take effect  
20 unless approved by the people at the general election to be held in  
21 November 2018 and, in such case, will take effect on the date of the  
22 official declaration of the vote thereon by the governor.